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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,520	07/20/2000	Dorothy B. Franks	GEMS:0091	2920

7590 11/29/2006

Patrick S Yoder
Suite 330
7915 FM 1960 West
Houston, TX 77070

EXAMINER

MOSSER, KATHLEEN MICHELE

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/620,520

Applicant(s)

FRANKS ET AL.

Examiner

Kathleen Mosser

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 11/17/2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Kathleen Mosser
Primary Examiner
Art Unit: 3714

Continuation of 11. does NOT place the application in condition for allowance because: Applicant remarks concerning the lengthy prosecution of this application are noted. The examiner first notes that prior to being docketed to the instant examiner, the application was docketed to only one examiner. Although numerous examiners and supervisors possessing signatory authority reviewed the actions of this examiner, there has only been one other examiner assigned to this application. Further, the examiner notes, that although "full faith and credit" is given to the previous examiner, it is the examiner's responsibility to ensure that the presently pending claims comply with all applicable rules and statutes, see 37 CFR 1.104(a)(1). Applicant's arguments with respect to the outstanding rejection under 35 USC §112, first paragraph are not considered persuasive. Applicant argues that the claims are enabled by the specification as originally filed. Applicant states in the last sentence of page 12, "Further, through analysis of such operational parameters (e.g., repeated logged errors, procedural inquiries, or the like), one of ordinary skill in the art would be able to determine the existence of training needs with respect to the equipment components". The examiner notes that this is not the limitation required by the currently pending claim language. The claims require two specific steps to be performed, firstly an analysis of the operation data is performed to identify at least one operational parameter affected by operator activities with the equipment component and secondly identification the training needs based upon this analysis. Although several references are made in the specification (as cited by applicant) stating that such an analysis may be, can be or is performed, no information as to how such an analysis is made is presented. Using applicant's example of a frequently replaced CD-Rom drive. The applicant has not shown how one of ordinary skill in the art, having the maintenance record that the CD-Rom drive has been replaced frequently could distinguish between a user operational error (leaving loose stickers on the face of the CD-Rom for example) or a system or hardware error. As shown in applicant's remarks on page 13 of the response, specific pieces of data, which are not mentioned anywhere in the specification may be required to determine the exact nature of the errors, maintenance, etc. The specific nature of what data must be recorded to make the analysis as claimed, would not be apparent to one of ordinary skill in the art based upon the applicant's disclosure as originally filed. For these reasons, and those included in the outstanding final rejection, the rejection of the claims under 35 USC §112, first paragraph are maintained. Applicant lastly alleges that a prima facie case of non-enablement has not been met. However, the applicant has failed to show any specific failing in the examiner's rejection to support this position. Applicant states repeatable that the development of the system would be a routine undertaking of design, fabrication and manufacturing for those of ordinary skill in the art, but has failed to show any objective evidence to support the assertion.

